

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MORGAN RAYMOND AST,
Petitioner,
v.
PATRICK COVELLO,
Respondent.

Case No. 2:21-cv-01195-KJM-JDP
ORDER HOLDING FINDINGS AND
RECOMMENDATIONS IN ABEYANCE
AND DENYING PETITIONER'S REQUEST
TO EXHAUST ADMINISTRATIVE
REMEDIES
ECF Nos. 19 & 20

Petitioner Morgan Raymond Ast, a state prisoner proceeding without counsel, seeks a writ of habeas corpus under 28 U.S.C. § 2254. ECF No. 1. On October 22, 2021, respondent moved to dismiss one of the three claims at issue as unexhausted. ECF No. 13. Petitioner agreed to delete the unexhausted claim and proceed with the other two. ECF No. 15 at 2. On December 1, 2021, I recommended that the unexhausted claim be dismissed. ECF No. 19.

While my findings and recommendations were pending, petitioner filed a “request to exhaust administrative remedies.” ECF No. 20. That single page filing does not ask for a stay or include any legal argument. I will deny petitioner’s request. If he wishes to return to state court and exhaust, he must file a properly supported motion to stay this case. To that end, I will hold my findings and recommendations in abeyance for twenty-one days to allow petitioner to file his motion. If petitioner does file a motion to stay within that time, respondent should file its opposition or statement of non-opposition within fourteen days. Petitioner may then file a reply

1 within seven days. If petitioner does not file a motion to stay within the twenty-one period, my
2 findings and recommendations will be submitted to the district judge for consideration.

3 In accordance with the foregoing, it is ORDERED that:

4 1. The December 1, 2021, findings and recommendations, ECF No. 19, are held in
5 abeyance.

6 2. Petitioner's request to exhaust administrative remedies, ECF No. 20, is DENIED.

7 3. Petitioner may file a motion to stay within twenty-one days of this order's entry.

8 If he does so, respondent should file an opposition or statement of non-opposition to that motion
9 within fourteen days. Petitioner shall then have seven days to file a reply.

10 4. If Petitioner does not file a motion to stay within the twenty-one day period, my
11 findings and recommendations, ECF No. 19, will be submitted to the district judge for
12 consideration.

13 IT IS SO ORDERED.

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15 Dated: March 29, 2022


16 JEREMY D. PETERSON
17 UNITED STATES MAGISTRATE JUDGE

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